

**REMARKS FROM THE 2022 SYMPOSIUM
*THE EQUAL RIGHTS AMENDMENT:
A NEW GUARANTEE OF SEX EQUALITY IN THE
U.S. CONSTITUTION*¹**

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In May of 1969, one of my heroes the late and great Shirley Chisholm addressed the U.S. Congress about the Equal Rights Amendment (ERA). She said: “Existing laws are not adequate to secure equal rights for women. Sufficient proof of this is the concentration of women in lower paying, menial, unrewarding jobs and their incredible scarcity in the upper-level jobs.”

I want to thank you all for coming together to talk about a topic that was timely four decades before Shirley Chisholm spoke, in her day, and today, decades after her words.

I want to thank Columbia Law School – and especially the ERA Project, the Center for Gender and Sexuality Law, the Columbia Journal on Gender and Law, and everyone involved in this important gathering.

A lot has changed since the Equal Rights Amendment was first introduced in Congress in 1923. We have seen the pendulum swing in the direction of rights for women, and women taking on roles and careers in ways that were unimaginable to our grandmothers. But that does not mean the argument about rights for women is over. That does not mean the pendulum will move in its present direction. It can be stopped in its tracks or swung back. So, the landscape we live in is different today, but the essential argument about women’s rights, and therefore about the ERA, has stayed the same.

My thoughts on this are clear: We needed an ERA a century ago. We needed one in Shirley Chisholm’s day, and we need an ERA today. Because wherever the pendulum swings on rights for women, someone is trying to swing it back.

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What I would like to do now is talk about how an Attorney General like me could use the ERA, whether that ERA is on a state level, or federal level. Now, my office defends the rights of women under existing law. We do it well, and we will continue to do it well. But my office could defend the rights of women more effectively, and more definitively, if there was an ERA.

Here are five ways the ERA could help us:

1) **Sex Discrimination Cases Would Be Brought Under the Strict Scrutiny Standard**

As you know, the current standard for deciding sex discrimination cases is complex and unwieldy, and it allows unsympathetic courts to water down protections. Having the ERA would force the government to show proof of a “compelling interest” for the government to treat people differently based on gender or gender identity. That higher standard could help us win cases.

2) **Title IX Would Be Strengthened**

We bring cases under Title IX, and Title IX protections can be watered down or reinforced by presidential rule making. If or when a future administration tries to water down Title IX, as the Trump Administration did, the ERA would give added weight and tools to anyone suing to stop that effort.

3) **Protections Under the Pregnancy Discrimination Act Would Be Strengthened**

This piece of legislation has been vital to keeping people at work, and for longer. But courts have been able to interpret its protections far too narrowly. The ERA could add argument to expanding those protections.

4) **Access to Reproductive Health Could Be Further Protected**

We have watched as the right to choose has been chipped away in many states. Having the ERA could address some of those efforts. For example, state ERAs in New Mexico and Connecticut have been cited by courts when striking down laws prohibiting Medicaid payments for abortions and contraception.

5) **The Federal Violence Against Women Act Would Be Strengthened**

This legislation originally allowed survivors to sue their attackers in federal court. That provision was struck down. That could be revisited with the ERA on the books.

Let me conclude by saying that the historic argument over the rights of Americans will never end. As President Kennedy said: “Democracy is never a final achievement. It is a call to an untiring effort.” Passing an Equal Rights Amendment will not put an end to the historic argument you are discussing at this symposium, but it will help people in positions like mine win a more legal arguments, help more people, and bring us closer to being a nation that secures the blessings of liberty for everyone.